

Ahren A. Tiller Esq. [SBN: 250608]  
BLC Law Center, APC  
1230 Columbia St., Ste 1100  
San Diego, CA 92101  
Phone (619) 894-8831  
Facsimile: (866) 444-7026

Attorneys for Plaintiff  
TIMOTHY DAWSON

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

TIMOTHY DAWSON,  
Plaintiff,

vs.

AMERICAN EXPRESS NATIONAL  
BANK,

Defendant(s),

Case No.:

COMPLAINT FOR DAMAGES FOR  
(1) VIOLATIONS OF THE  
ROSENTHAL FAIR DEBT  
COLLECTION PRACTICES ACT  
(CAL. CIV. CODE §§ 1788-1778.32)  
AND (2) VIOLATIONS OF THE  
TELEPHONE CONSUMER  
PROTECTION ACT (47 U.S.C. §227)

JURY TRIAL DEMANDED

**COMPLAINT FOR DAMAGES**

**INTRODUCTION**

1. TIMOTHY DAWSON (hereinafter referred to as “Plaintiff”), by and through his Counsel of record, brings this action against AMERICAN EXPRESS NATIONAL BANK (hereinafter referred to as “Amex” or “Defendant”) pertaining to actions by Defendant to unlawfully collect a debt allegedly owed by Plaintiff, including but not limited to, collection via the use of an Automated Telephone Dialing System (“ATDS”) and/or Artificial or Prerecorded Voice in violation of the

1 Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), and the  
 2 Rosenthal Fair Debt Collection Practices Act (“RFDCPA” [CAL. CIV. CODE §§  
 3 1788-1788.32]), thereby invading Plaintiff’s privacy, and causing Plaintiff  
 4 damages.

5 2. The California legislature determined that unfair or deceptive collection practices  
 6 undermine the public confidence which is essential to the continued functioning of  
 7 the banking and credit system. The legislature further determined there is a need  
 8 to ensure that debt collectors and debtors exercise their responsibilities to one  
 9 another with fairness, honesty, and due regard for the rights of others. The  
 10 legislature’s explicit purpose of enacting the Rosenthal Fair Debt Collection  
 11 Practices Act of California (hereinafter “RFDCPA”) was to prohibit debt  
 12 collectors from engaging in unfair or deceptive acts or practices in the collection  
 13 of consumer debts and to require debtors to act fairly in entering into and honoring  
 14 such debts.<sup>1</sup>

15 3. The Telephone Consumer Protections Act (hereafter “TCPA”) was designed to  
 16 prevent calls like the ones described within this complaint, and to protect the  
 17 privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses  
 18 of telephone technology – for example, computerized calls dispatched to private  
 19 homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*,  
 20 132 S. Ct. 740, 744 (2012)

21 4. In enacting the TCPA, Congress specifically found that “the evidence presented to  
 22 Congress indicates that automated or prerecorded calls are a nuisance and an  
 23 invasion of privacy, regardless of the type of call . . .” *Id.* at §§ 12-13. See also,  
 24 *Mims*, 132 S. Ct., at 744.

25 5. As Judge Easterbrook of the Seventh Circuit explained in a TCPA case regarding  
 26 calls similar to this one

27  
 28  


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<sup>1</sup> CA Civil Code §§ 1788.1(a)-(b)

1  
2 The Telephone Consumer Protection Act ... is well known for its provisions  
3 limiting junk-fax transmissions. A less-litigated part of the Act curtails the  
4 use of automated dialers and prerecorded messages to cell phones, whose  
5 subscribers often are billed by the minute as soon as the call is answered—  
6 and routing a call to voicemail counts as answering the call. An automated  
7 call to a landline phone can be an annoyance; an automated call to a cell  
8 phone adds expense to annoyance.

9 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

- 10 6. Plaintiff makes the allegations contained herein on information and belief (except  
11 as to those allegations regarding himself, which are made on personal knowledge).

## 12 **JURISDICTION AND VENUE**

- 13 7. This action is based on Defendant's violations of the RFDCPA found in California  
14 Civil Code §§ 1788 - 1788.32; and the TCPA, which is found in Title 47 of United  
15 States Code Section 227, *et seq.*

- 16 8. This Court has jurisdiction over Defendant, pursuant to 28 U.S.C. § 1331, as the  
17 unlawful practices alleged herein involve a federal question under the TCPA.

- 18 9. This Court has jurisdiction over the Defendant, as the unlawful practices alleged  
19 herein occurred in California, in the County of Ventura and violated California's  
20 Civil Code §§ 1788 - 1788.32.

- 21 10. This Court further has supplemental jurisdiction over Plaintiff's California Causes  
22 of action, pursuant to 28 U.S.C. § 1367(a), as Plaintiff's California state law  
23 claims are so related to Plaintiff's Federal TCPA claims in this action, that they  
24 form part of the same case or controversy under Article III of the United States  
25 Constitution

- 26 11. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(b)(1)-(2), because all  
27 or some of the unlawful practices and violations of law alleged herein occurred  
28 and are occurring in the County of Ventura, California. Furthermore, Defendant

1 regularly conducts business within State of California, County of Ventura, and  
2 Plaintiff resides in Ventura County, California.

3  
4 **PARTIES**

5 12. Plaintiff is, and was at all times mentioned herein, a natural person residing in  
6 the County of Ventura, in the State of California.

7 13. Plaintiff is a natural person from whom a debt collector sought to collect a  
8 consumer debt which was due and owing or alleged to be due and owing from  
9 Plaintiff, and therefore Plaintiff is a “debtor” as that term is describe by Cal Civ.  
10 Code §1788.2(h).

11 14. Defendant American Express National Bank is a national banking association.

12 15. Defendant American Express National Bank regularly attempts to collect through  
13 the use of mails, electronic communication, and telephone, “consumer debts ”  
14 allegedly owed to it, as that term is defined by Cal. Civ. Code §1788.2(f).

15 16. When individuals owe Amex debts for regular monthly payments on consumer  
16 loans and credit cards, and other similar obligations, Amex collects on those  
17 consumer debts owed to it through the mail, electronic communication, and  
18 telephone. Therefore, Amex is a “debt collector” as that term is defined by Cal.  
19 Civ. Code §1788.2(c), and engages in “debt collection” as that term is defined by  
20 Cal. Civ. Code §1788.2(b).

21 17. Defendant is, and all times mentioned herein, was a corporation and “person,” as  
22 defined by 47 U.S.C. § 153(39).

23 18. At all times relevant hereto, Defendant used, controlled and or operated an  
24 “automatic telephone dialing system” (“ATDS”) as that term is defined by 47  
25 U.S.C. § 227(a)(1) and/or placed calls to Plaintiff using an automated or  
26 prerecorded voice (“Recorded Voice”) as that term is defined in 47 U.S.C. §  
27 227(b)(1)(A)

28 19. This case involves money, property, or their equivalent, due or owing or alleged

1 to be due or owing from a natural person by reason of a consumer credit  
2 transaction. This action arises out of a consumer debt and “consumer credit” as  
3 those terms are defined by Cal. Civ. Code §1788.2(f).

4  
5 **GENERAL ALLEGATIONS**

6 20. Plaintiff incorporates by reference and realleges Paragraphs 1-19 above as if  
7 fully stated herein.

8 21. Plaintiff took out an unsecured charge card account with Amex on or about  
9 October of 2013 (“charge card”).

10 22. Plaintiff made payments toward the charge card for nearly five years and  
11 maintained good standing, but eventually fell on financial hardship and was  
12 unable to maintain the regular monthly payments.

13 23. Upon going into default, agents for Amex called Plaintiff multiple times and  
14 requested payment through the use of an ATDS and/or a Recorded Voice, often  
15 1-5 times per day, almost every single day.

16 24. Plaintiff sought out and retained an attorney to represent him with regards to the  
17 debt allegedly owed to Amex.

18 25. Plaintiff’s Counsel sent a Cease and Desist Letter to Amex via facsimile to two  
19 different facsimile numbers owned and operated by Amex, 1-855-603-8789  
20 (“First Cease and Desist Letter”) and 1-800-542-0779 (“Second Cease and Desist  
21 Letter”).

22 26. Amex received the both the First and Second Cease and Desist Letters via  
23 facsimile on October 2, 2018, at 11:51 pm at both facsimile numbers (1-855-603-  
24 8789 and 1-800-542-0779).

25 27. Despite receipt of the Cease and Desist Letters and two different facsimile  
26 numbers, agents for Amex continued to call Plaintiff.

27 28. Agents for Amex called Plaintiff on his cellular phone, as well as multiple times  
28 at his workplace.

- 1 29. Plaintiff spoke to agents for Amex when they called his workplace and stated  
2 that they should not be calling him at work or on his cellular phone, and  
3 reiterated that he had retained Counsel who had sent two letters to Amex.
- 4 30. In response to the continued calls to Plaintiff's cellular phone and workplace, on  
5 November 20, 2018, Plaintiff's Counsel drafted another letter wherein he stated  
6 that he represented Plaintiff with regards to any claims held by Defendant  
7 ("Third Cease and Desist Letter").
- 8 31. In the Third Cease and Desist Letter, Plaintiff's Counsel provided Plaintiff's  
9 name and the last four digits of his social security number, and explained again  
10 that demand was being made pursuant to Cal. Civ. Code §§1788.14 and 1788.17  
11 that all further communication with Plaintiff cease and that any future  
12 communication be exclusively sent to Plaintiff's Counsel.
- 13 32. Plaintiff's Counsel mailed the Third Cease and Desist Letter to Amex at:
- 14  
15 American Express  
16 World Financial Center,  
200 Vesey Street New York  
New York, NY 10285-1000
- 17 33. After receipt of the Third Cease and Desist Letter, representatives of Amex have  
18 called Plaintiff in excess of 35 times on his cellular phone, and in excess of fifty  
19 (50) times on his work telephone.
- 20 34. Combined, Amex has called Plaintiff over eighty-five (85) times in total after  
21 receipt in writing of notice that Plaintiff had retained Counsel for any debts owed  
22 to Amex, and an explicit warning that all direct contact with Plaintiff should  
23 cease.
- 24 35. On at least two occasions between October 2, 2018 and November 21, 2018,  
25 Plaintiff spoke to Amex representatives and explained that he had an attorney,  
26 provided the representatives with his attorney's information, and orally  
27 instructed them to call his attorney and cease calling Plaintiff.
- 28 36. In said telephone calls, Plaintiff orally revoked any alleged prior consent to call

1 Plaintiff via the use of an ATDS and/or Recorded voice. Despite said oral  
2 revocation, agents for the Defendants continued to call Plaintiff using an ATDS  
3 and/or Recorded Voice

4 37. Despite two letters sent via facsimile, verbal notice from Plaintiff, and a mailed  
5 letter from Plaintiff's Counsel, Amex continues to call Plaintiff, often multiple  
6 times per day in rapid succession, despite being repeatedly notified orally and in  
7 writing that Plaintiff had retained counsel regarding this debt.

8 38. Amex, or its agents or representatives, have contacted Plaintiff on his cellular  
9 telephone over thirty-five (35) times since October 2, 2018, including through  
10 the use of an ATDS and/or Recorded voice as those terms are defined in 47  
11 U.S.C. § 227(a)(1) and/or 47 U.S.C. § 227(b)(1)(A).

12 39. Many of the Defendants' calls to Plaintiff after receiving Cease and Desist  
13 Letters Nos. 1-3 contained an "artificial or prerecorded voice" as prohibited by  
14 47 U.S.C. § 227(b)(1)(A).

15 40. The multiple calls made by Defendants or their agents after October 2, 2018 were  
16 therefore made in violation of 47 U.S.C. § 227(b)(1).

17 41. Despite receipt of two (2) separate letters sent via facsimile and one (1) by mail,  
18 along with oral instructions to cease calling Plaintiff via the telephone, all of  
19 which provided irrefutable notice that Plaintiff had revoked consent to call his  
20 cellular telephone by any means and that he had retained Counsel regarding these  
21 alleged debts, Defendants continues to contact Plaintiff repeatedly to date

22 42. As a result of Amex's relentless and harassing collection calls and emails,  
23 Plaintiff has experienced anger and disbelief, and feelings of powerlessness,  
24 which have resulted in a loss of sleep, loss of appetite, headaches, anxiety and  
25 panic attacks, feelings of hypervigilance, paranoia and depression.



**CAUSES OF ACTION**

**I.**

**FIRST CAUSE OF ACTION**

**VIOLATIONS OF CAL. CIV. CODE §1788.14(c)**

43. Plaintiff realleges and incorporates by reference Paragraphs 1 through 42, inclusive, as if fully set forth herein.

44. When Plaintiff's Counsel sent the Cease and Desist Letters to Amex, Defendant was aware, or reasonably should have been aware, that Plaintiff was represented by an attorney.

45. When Plaintiff stated to representatives for Amex on two (2) separate occasions that he was represented by Counsel, Amex was aware, or reasonably should have been aware, that Plaintiff was represented by an attorney, and that Plaintiff was exerting his rights not to be contacted directly regarding this debt.

46. Cal. Civ. Code §1788.14(c) provides in relevant part,

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

(c) Initiating communications, other than statements of account, with the debtor with regard to the consumer debt, when the debt collector has been previously notified in writing by the debtor's attorney that the debtor is represented by such attorney with respect to the consumer debt and such notice includes the attorney's name and address and a request by such attorney that all communications regarding the consumer debt be addressed to such attorney, unless the attorney fails to answer correspondence, return telephone calls, or discuss the obligation in question. This subdivision shall not apply where prior approval has been obtained from the debtor's attorney, or where the communication is a response in the ordinary course of business to a debtor's inquiry.

47. By calling Plaintiff on his cellular and work phones combined over eighty-five (85) times after receipt of the Cease and Desist Letters from Plaintiff's Counsel, Amex violated Cal. Civ. Code §1788.14(c).

48. As a result of the constant collection calls by Amex, Plaintiff has experienced



1 anxiety, fear and uneasiness, has had difficulty sleeping, shortness of breath,  
2 nausea, and has at times been unable to calm down as the constant and harassing  
3 collection calls by Amex are overwhelming.

4  
5 **II.**  
6 **SECOND CAUSE OF ACTION**  
7 **Negligent Violations of the TCPA**  
8 **(47.S.C. § 227 Et. Seq.)**

9 49. Plaintiff realleges and incorporates by reference Paragraphs 1 through 48,  
10 inclusive, as if fully set forth.

11 50. Through the three (3) separate Cease and Desist Letters from Plaintiff's Counsel,  
12 sent by both facsimile and US Mail, and orally, Plaintiff revoked any alleged  
13 consent for Amex or its agents or representatives to call Plaintiff on his cellular  
14 telephone via the use of an ATDS and/or Recorded Voice.

15 51. The foregoing acts and omissions of Amex constitute numerous and multiple  
16 negligent violations of the TCPA, including but not limited to each and every  
17 one of the above-cited provisions of 47 U.S.C. § 227, *et. seq.*

18 52. As a result of Amex's negligent violations of 47 U.S.C. §227, *et. seq.*, the  
19 Plaintiff is entitled to an award of \$500 in statutory damages, for each and every  
20 violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

21 53. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in  
22 the future, pursuant to 47 U.S.C. § 227(b)(3)(A).

**III.**  
**THIRD CAUSE OF ACTION**  
**Knowing and/or Willful Violations of the TCPA**  
**(47.S.C. § 227 Et. Seq.)**

54. Plaintiff realleges and incorporates by reference Paragraphs 1 through 53, inclusive, as if fully set forth.

55. Through the three (3) separate Cease and Desist Letters from Plaintiff's Counsel, sent by both facsimile and US Mail, and orally, Plaintiff revoked any alleged consent for the Amex or its agents or representatives to call Plaintiff on his cellular telephone via the use of an ATDS and/or Recorded Voice.

56. The foregoing acts of the Amex constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227, *et. seq.*

57. Therefore, since Amex or its agents or representatives continued to call Plaintiff despite indisputably being informed to not call Plaintiff on multiple occasions through multiple different means, and that Plaintiff had revoked any alleged prior consent to call Plaintiff's cellular telephone via the use of and ATDS and/or Recorded Voice, Amex's acts were willful.

58. As a result of Amex's knowing and/or willful violations of 47 U.S.C. §227, *et. seq.*, the Plaintiff is entitled to an award of \$1,500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

59. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in the future, pursuant to 47 U.S.C. § 227(b)(3)(A).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff having set forth the claims for relief against Defendant herein, respectfully request this Court enter a Judgment against Defendant as follows:

- 1 a. An award of actual damages pursuant to Cal. Civ. Code §1788.30(a) according to
- 2 proof.
- 3 b. An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code
- 4 §1788.30(b).
- 5 c. An award of reasonable attorney's fees and costs pursuant to Cal. Civ. Code
- 6 §1788.30(c).
- 7 d. For such other and further relief as the Court may deem just and proper.
- 8 e. As to the Second Cause of Action, \$500 in statutory damages for each and every
- 9 one of Defendant's negligent violations of 47 U.S.C. §227(b)(1), pursuant to 47
- 10 U.S.C. § 227(b)(3)(B).
- 11 f. Injunctive relief prohibiting such conduct in the future pursuant to 47 U.S.C. §
- 12 227(b)(3)(A);
- 13 g. As to the Third Cause of Action, \$1,500.00 in statutory damages for each and
- 14 every one of Defendant's knowing and/or willful violations of 47 U.S.C. §
- 15 227(b)(1), pursuant to 47 U.S.C. § 227(b)(3)(C).
- 16 h. For such other and further relief as the Court may deem just and proper.

17  
18 Dated: February 20th, 2019

By: /s/ Ahren A. Tiller  
Ahren A. Tiller, Esq.  
BLC Law Center, APC  
Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury on all issues triable by jury.

Dated: February 20, 2019

By: /s/ Ahren A. Tiller  
Ahren A. Tiller, Esq.  
BLC Law Center, APC  
Attorneys for Plaintiff